

# SENATE BILL REPORT

## SB 6614

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As of March 7, 2008

**Title:** An act relating to exemplary damages.

**Brief Description:** Specifying how exemplary damages may be recovered.

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**Sponsors:** Senators Weinstein, Kline and Fairley.

**Brief History:**

**Committee Activity:** Judiciary: 2/06/08.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Dawn Noel (786-7472)

**Background:** In 1986 the Legislature passed a law limiting an award of non-economic damages for personal injury or death. The law defined "non-economic damages" as subjective, non-monetary losses, including but not limited to pain, suffering, inconvenience, mental anguish, disability, or disfigurement, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship. The law limited non-economic damages based on a formula, which involved the multiplication of 0.43 by the average annual wage and by the person's life expectancy.

This law was deemed unconstitutional by the Washington Supreme Court in a case called *Sofie v. Fibreboard Corp.* (1989). The court reasoned that the law violated the state constitutional right to a trial by jury because it interfered with the jury's traditional function to determine damages.

State case law has held that exemplary or punitive damages are unavailable in the absence of express statutory authorization. Current laws that authorize punitive damages and/or treble damages include laws concerning damage to trees; damage or theft to livestock; improper acquisition of trade secrets; unauthorized interception, transmission, or recording of a telephone conversation; and engaging in unfair trade practices under the Consumer Protection Act.

A "dependent" child is defined as one who has been abandoned, who is abused or neglected by a person legally responsible for the child's care, or who has no parent or guardian capable of adequately caring for the child.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

"Community custody" is that portion of an offender's sentence that is served in the community subject to controls placed on the offender's movement and activities by the Department of Corrections (DOC). "Post-release supervision" is that portion of an offender's sentence that is not served in community custody. "Community placement" may consist entirely of community custody, entirely of post-release supervision, or a combination of the two.

**Summary of Bill:** The law limiting non-economic damages based on a formula is struck. Provisions relating to the recovery of exemplary damages are added. Exemplary damages are recoverable if it is proven by a preponderance of the evidence that the party against whom the damages are sought has acted with reckless and wanton disregard for the health, safety, and welfare of another.

The damages awarded are subject to a 50 percent reallocation, to be distributed as follows:

- 25 percent must be provided to the state General Fund for the Department of Social and Health Services to fund services for dependent children and their families; and
- 25 percent must be provided to the state General Fund for the Department of Corrections to fund community custody, community placement, and post-release supervision of offenders.

This section does not apply to a civil action against the state, its representatives or agents, or a unit of local government, or its representatives or agents.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Washington is one of five states that does not generally permit punitive damages. This bill would only authorize such damages for outrageous conduct or reckless disregard for human life. Half of the damages would go towards helping dependent children and their families and it would also help ex-felons successfully re-enter the community. Statistics show that it is a false idea that punitive damages provide a windfall to plaintiffs and their attorneys.

CON: Washington has longstanding legal tradition against punitive damages. Small businesses cannot afford them. Washington is already an expensive state to do business. Insurance does not cover punitive damages. This bill would make employers become guarantors of their employees. This bill would also affect homeowners without insurance. Punishment is better left with the criminal justice system, where the penalties are fixed, and not left to unguided juries.

**Persons Testifying:** PRO: Matthew Bergman, Randy Gordon, Washington State Trial Lawyers Association.

CON: Troy Nichols, National Federation of Independent Business; Suzanne Michael, Dan Bridges, Washington Defense Trial Lawyers; Mary Spillane, Washington State Medical Association, Liability Reform Coalition.